

IN THE

Court of Appeal of the State of California

IN AND FOR THE

Fifth Appellate District

F033643 People v. Padilla

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

F034333 In re Lupe C., a Minor

F035140 In re Lupe C. on Habeas Corpus

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

F033209 People v. Hieb, Sr.

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

F032995 People v. Schierenbeck

Appellant's petition for rehearing filed herein is denied.

F031212 Rodriguez v. Merced Communications-Fiesta Radio 106 et al.

Filed modification of opinion (no change in judgment).

Appellants' petition for rehearing is denied.

We concur: Wiseman, J.; Levy, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

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F032013 O'Neal Irrigation Supply Co., Inc. v. Mauldin-Dorfmeir Construction et al.

- A. There is stricken from the Final Judgment, filed on September 1, 1998, in this case, the following:
- (1) The sum of \$60,664 appearing on line 13 of page 2;
 - (2) The statement “and attorneys’ fees and costs in a sum according to proof. Excepting any such fees and costs it may have incurred as a result of Defendants’ appeal of the first on this matter, consistent with the opinion of the Fifth District Court of Appeal,” beginning on line 14 and ending with line 19 of page 2.
- B. In all other respects, the Final Judgment is affirmed.
- C. The postjudgment order regarding costs and attorney’s fees is vacated.
- D. On remand the trial court shall:
- (1) Modify the amount to be awarded to O'Neal to reflect a deduction in the sum of \$17,000 for the payment made by Johnson to O'Neal in August 1992;
 - (2) Based on the record evidence adduced at trial, further modify the amount to be awarded to O'Neal to take into account, in a manner consistent with this opinion, the credit memos (and any restocking charges) issued by O'Neal to reflect the return of materials shipped to the job site after June 19, 1992; in making such determinations, the trial court shall decide which party bore the burden of proof and assess the evidence in light of such burden. No new trial of these issues shall be conducted.
 - (3) Rehear and redetermine the right to and the amount of costs and attorneys' fees; and,
 - (4) Enter an Amended Final Judgment which includes each of the trial court's determinations on remand.
- E. Each party shall bear its own appellate costs. Dibiaso, Acting P.J.

We concur: Harris, J.; Levy, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F035472 In re Lance V., a Minor

No brief or request for extension of time having been filed within the time provided, the appeal is dismissed.

IN THE
Court of Appeal of the State of California

IN AND FOR THE
Fifth Appellate District

F035182 Soza v. Ziering, Inc. et al.
F035656 Soza Ziering, Inc. et al.

The above entitled actions are consolidated for briefing and for determination of all issues raised therein.